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IN THE UNITED STATES DISTRICT COURT  
SOUTHER DISTRICT OF NEW YORK

-----:  
LYONS PARTNERSHIP, L.P. AND :  
HIT ENTERTAINMENT, INC., :  
Plaintiffs, :  
 :  
v. : Civil Action No.  
 : 07 -CV- 7121 (JUDGE STANTON)  
PARTY ART PRODUCTIONS, INC., :  
ROBERT HERMAN, PHILIP HERMAN, : ANSWER & AFFIRMATIVE  
PARTY POOPERS, INC., MARLA MASE, : DEFENSES  
57<sup>TH</sup> STREET PARTY CORP., D/B/A  
SAVE THE DATE, JENNIFER GILBERT,  
THE MAGIC AGENCY INC., SHELLEY  
CARROLL, ERIC SILVEY D/B/A  
ERIC SILVEY D/B/A ERIC SILVEY  
ENTERTAINMENT,  
 :  
Defendants :  
 :  
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Defendants, The Magic Agency Inc. and Shelley Carroll  
(hereinafter collectively "Magic Agency" or "Defendants") by their  
undersigned attorneys, as and for their Answer to the Complaint  
hereby state as follows:

1. Defendants deny the allegations contained in Paragraph 1  
of the Complaint.

2. With respect to the allegations contained in Paragraph 2 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

3. Defendants deny the allegations contained in Paragraph 3 of the Complaint.

4. Defendants deny the allegations contained in Paragraph 4 of the Complaint.

5. With respect to the allegations contained in Paragraph 5 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

6. With respect to the allegations contained in Paragraph 6 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

7. With respect to the allegations contained in Paragraph 7 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

8. With respect to the allegations contained in Paragraph 8 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

9. With respect to the allegations contained in Paragraph 9 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

10. With respect to the allegations contained in Paragraph 10 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

11. With respect to the allegations contained in Paragraph 11 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

12a. With respect to the allegations contained in Paragraph 9a of the Complaint, Defendants admit that Magic Agency Inc. is a New York corporation with its principal place of business at 351 East 85<sup>th</sup> Street, New York, NY. Defendants deny the remaining allegations contained in Paragraph 12a of the Complaint.

12b. With respect to the allegations contained in Paragraph 12b of the Complaint, Defendants admit that Shelley Carroll is an officer of The Magic Agency Inc. Defendants deny the remaining allegations contained in Paragraph 12b of the Complaint.

13. With respect to the allegations contained in Paragraph 13 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations

therein, thus Defendants deny those allegations.

14. With respect to the allegations contained in Paragraph 14 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

15. With respect to the allegations contained in Paragraph 15 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

16. With respect to the allegations contained in Paragraph 16 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

17. With respect to the allegations contained in Paragraph 17 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

18. With respect to the allegations contained in Paragraph 18 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

19. With respect to the allegations contained in Paragraph 19 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations

therein, thus Defendants deny those allegations.

20. With respect to the allegations contained in Paragraph 20 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

21. With respect to the allegations contained in Paragraph 21 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

22. With respect to the allegations contained in Paragraph 22 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

23. With respect to the allegations contained in Paragraph 23 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

24. With respect to the allegations contained in Paragraph 24 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

25. With respect to the allegations contained in Paragraph 25 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations

therein, thus Defendants deny those allegations.

26. With respect to the allegations contained in Paragraph 26 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

27. With respect to the allegations contained in Paragraph 27 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

28. With respect to the allegations contained in Paragraph 28 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

29. With respect to the allegations contained in Paragraph 29 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

30. With respect to the allegations contained in Paragraph 30 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

31. With respect to the allegations contained in Paragraph 31 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations

therein, thus Defendants deny those allegations.

32. With respect to the allegations contained in Paragraph 32 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

33. With respect to the allegations contained in Paragraph 33 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

34. With respect to the allegations contained in Paragraph 34 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

35. With respect to the allegations contained in Paragraph 35 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

36. With respect to the allegations contained in Paragraph 36 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

37. With respect to the allegations contained in Paragraph 37 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations

therein, thus Defendants deny those allegations.

38. With respect to the allegations contained in Paragraph 38 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

39. With respect to the allegations contained in Paragraph 39 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

40. With respect to the allegations contained in Paragraph 40 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

41. With respect to the allegations contained in Paragraph 41 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

42. With respect to the allegations contained in Paragraph 42 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

43. With respect to the allegations contained in Paragraph 43 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations

therein, thus Defendants deny those allegations.

44. With respect to the allegations contained in Paragraph 44 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

45. With respect to the allegations contained in Paragraph 45 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

46. With respect to the allegations contained in Paragraph 46 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

47. With respect to the allegations contained in Paragraph 47 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

48. With respect to the allegations contained in Paragraph 48 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

49. With respect to the allegations contained in Paragraph 49 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations

therein, thus Defendants deny those allegations.

50. With respect to the allegations contained in Paragraph 50 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

51. With respect to the allegations contained in Paragraph 51 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

52. With respect to the allegations contained in Paragraph 52 of the Complaint, Defendants admit that in April 2006, they received a settlement demand package, containing a draft of this Complaint. Defendants deny the remaining allegations contained in Paragraph 52 of the Complaint.

53. Defendants deny the allegations contained in Paragraph 53 of the Complaint.

54. Defendants deny the allegations contained in Paragraph 54 of the Complaint.

55. With respect to the allegations contained in Paragraph 55 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

56. With respect to the allegations contained in Paragraph 56 of the Complaint, Defendants are without knowledge or information

sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

57. With respect to the allegations contained in Paragraph 57 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

58. Defendants deny the allegations contained in Paragraph 58 of the Complaint.

59. With respect to the allegations contained in Paragraph 59 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

60. With respect to the allegations contained in Paragraph 60 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

61. Defendants deny the allegations contained in Paragraph 61 of the Complaint.

62. Defendants deny the allegations contained in Paragraph 62 of the Complaint.

63. Defendants deny the allegations contained in Paragraph 63 of the Complaint.

64. Defendants deny the allegations contained in Paragraph 64 of the Complaint.

65. Defendants deny the allegations contained in Paragraph 65 of the Complaint.

66. Defendants deny the allegations contained in Paragraph 66 of the Complaint.

67. Defendants deny the allegations contained in Paragraph 67 of the Complaint.

68. Defendants deny the allegations contained in Paragraph 68 of the Complaint.

69. Defendants repeat and incorporate herein all of the above responses, as if set forth in full.

70. With respect to the allegations contained in Paragraph 70 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

71. With respect to the allegations contained in Paragraph 71 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

72. Defendants deny the allegations contained in Paragraph 72 of the Complaint.

73. Defendants deny the allegations contained in Paragraph 73 of the Complaint.

74. Defendants deny the allegations contained in Paragraph 74 of the Complaint.

75. Defendants deny the allegations contained in Paragraph 75 of the Complaint.

76. Defendants deny the allegations contained in Paragraph 76 of the Complaint.

77. With respect to the allegations contained in Paragraph 77 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

78. Defendants deny the allegations contained in Paragraph 78 of the Complaint.

79. Defendants deny the allegations contained in Paragraph 79 of the Complaint.

80. Defendants deny the allegations contained in Paragraph 80 of the Complaint.

81. With respect to the allegations contained in Paragraph 81 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

82. Defendants deny the allegations contained in Paragraph 82 of the Complaint.

83. Defendants deny the allegations contained in Paragraph 83 of the Complaint.

84. Defendants deny the allegations contained in Paragraph 84 of the Complaint.

85. Defendants deny the allegations contained in Paragraph 85 of the Complaint.

86. Defendants deny the allegations contained in Paragraph 86 of the Complaint.

87. Defendants deny the allegations contained in Paragraph 87 of the Complaint.

88. Defendants deny the allegations contained in Paragraph 88 of the Complaint.

89. Defendants deny the allegations contained in Paragraph 89 of the Complaint.

90. Defendants repeat and incorporate herein all of the above responses, as if set forth in full.

91. With respect to the allegations contained in Paragraph 91 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

92. With respect to the allegations contained in Paragraph 92 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

93. With respect to the allegations contained in Paragraph 93 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

94. With respect to the allegations contained in Paragraph 94 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

95. With respect to the allegations contained in Paragraph 95 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

96. Defendants deny the allegations contained in Paragraph 96 of the Complaint.

97. Defendants deny the allegations contained in Paragraph 97 of the Complaint.

98. Defendants deny the allegations contained in Paragraph 98 of the Complaint.

99. Defendants repeat and incorporate herein all of the above responses, as if set forth in full.

100. Defendants deny the allegations contained in Paragraph 100 of the Complaint.

101. Defendants deny the allegations contained in Paragraph 101 of the Complaint.

102. Defendants deny the allegations contained in Paragraph 102 of the Complaint.

103. Defendants deny the allegations contained in Paragraph 103 of the Complaint.

104. Defendants repeat and incorporate herein all of the above responses, as if set forth in full.

105. With respect to the allegations contained in Paragraph 105 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

106. With respect to the allegations contained in Paragraph 106 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

107. With respect to the allegations contained in Paragraph 107 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

108. With respect to the allegations contained in Paragraph 108 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

109. With respect to the allegations contained in Paragraph 109 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

110. Defendants deny the allegations contained in Paragraph 110 of the Complaint.

111. Defendants deny the allegations contained in Paragraph 111 of the Complaint.

112. Defendants deny the allegations contained in Paragraph 112 of the Complaint.

113. Defendants deny the allegations contained in Paragraph 113 of the Complaint.

114. Defendants deny the allegations contained in Paragraph 114 of the Complaint.

115. Defendants deny the allegations contained in Paragraph 115 of the Complaint.

116. Defendants deny the allegations contained in Paragraph 116 of the Complaint.

117. Defendants deny the allegations contained in Paragraph 117 of the Complaint.

118. Defendants deny the allegations contained in Paragraph 118 of the Complaint.

119. Defendants deny the allegations contained in Paragraph 119 of the Complaint.

120. Defendants deny the allegations contained in Paragraph 120 of the Complaint.

121. Defendants repeat and incorporate herein all of the above responses, as if set forth in full.

122. Defendants deny the allegations contained in Paragraph 122 of the Complaint.

123. Defendants deny the allegations contained in Paragraph 123 of the Complaint.

124. Defendants deny the allegations contained in Paragraph 124 of the Complaint.

125. Defendants deny the allegations contained in Paragraph 125 of the Complaint.

126. Defendants deny the allegations contained in Paragraph 126 of the Complaint.

127. Defendants repeat and incorporate herein all of the above responses, as if set forth in full.

128. With respect to the allegations contained in Paragraph 128 of the Complaint, Defendants are without knowledge or information sufficient to form a belief as to the veracity of the allegations therein, thus Defendants deny those allegations.

129. Defendants deny the allegations contained in Paragraph 129 of the Complaint.

130. Defendants deny the allegations contained in Paragraph 130 of the Complaint.

131. Defendants deny the allegations contained in Paragraph 131 of the Complaint.

132. Defendants deny the allegations contained in Paragraph 132 of the Complaint.

133. Defendants deny the allegations contained in Paragraph 133 of the Complaint.

134. Defendants deny the allegations contained in Paragraph 134 of the Complaint.

135. Defendants deny the allegations contained in Paragraph 135 of the Complaint.

136. Defendants deny the allegations contained in Paragraph 136 of the Complaint.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' Complaint fails to state a claim upon which relief can be granted and Defendants' reserve the right to move at or before the time of trial to dismiss all or some portion of same.

**SECOND AFFIRMATIVE DEFENSE**

Defendants have never advertised, purchased, offered, sold, or sent a costume looking like, or called "Barney".

**THIRD AFFIRMATIVE DEFENSE**

Defendants do not offer or sell characters, Defendants are a talent buyer of magicians for adult corporate events

**FOURTH AFFIRMATIVE DEFENSE**

Defendants do not possess and have never possessed any costumes, or offered them for sale to anyone.

FIFTH AFFIRMATIVE DEFENSE

Defendants' did not breach any legal duty owed to Plaintiffs.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint does not state a claim because defendants do not use the alleged copyrights, trade names and trademarks, the use of which is alleged to be the cause of damage to the plaintiffs.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovery by operation of the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovery for failure to mitigate damages.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovery by operation of the doctrine of collateral estoppel.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs multiple requests for relief are barred by the

doctrine of election of remedy.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovery by operation of the doctrine of estoppel.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs' actions are barred by the Doctrine of Unclean Hands.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovery by operation of the doctrine of waiver.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendants' breached no duty or obligation of any kind whether arising from common law, statute, contract, tort or otherwise.

FIFTEENTH AFFIRMATIVE DEFENSE

The relief requested by Plaintiffs are contrary to public policy, and therefore unavailable at equity or law.

SIXTEENTH AFFIRMATIVE DEFENSE

Any and all alleged damages sustained by Plaintiffs were caused by third persons over whom the Defendants have no control.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendants' owed no legal duty to Plaintiffs.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims under federal law fail as there is no likelihood of confusion because the respective marks are not confusingly similar and/or the services of the parties are non-competitive and unrelated.

NINETEENTH AFFIRMATIVE DEFENSE

Pursuant to the Copyright Act, Defendants' maximum liability in this action is \$200.

TWENTIETH AFFIRMATIVE DEFENSE

If Plaintiffs were injured or damaged as claimed, such injury or damage was caused by the culpable conduct of Plaintiffs, and was not caused by Defendants.

TWENTY FIRST AFFIRMATIVE DEFENSE

If Plaintiffs were injured or damaged as claimed, such injury or damage was caused by the culpable conduct of third parties, and was not caused by Defendants.

TWENTY SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by their bad faith and those of their agents.

WHEREFORE, the Defendants demand:

A. That Plaintiffs' complaint be dismissed and Plaintiffs be ordered to pay the cost, charges and disbursements, including reasonable attorney's fees, incurred in the defense of this action.

JURY DEMAND

Defendants hereby demand a trial by jury as to all issues so triable.

October 18, 2007

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Attorneys for Defendants

The Magic Agency Inc. And  
Shelley Carroll